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9
 10 BEFORE THE
 MEDICAL BOARD OF CALIFORNIA
 DIVISION OF MEDICAL QUALITY
 11 DEPARTMENT OF CONSUMER AFFAIRS
 STATE OF CALIFORNIA

12 In the Matter of the Accusation)	NO. D-4954
Against:)	
13)	L- 58706
THEODORE KONIG, M.D.)	
14 9985 Sierra)	STIPULATION AND DECISION
Fontana, CA 92335)	OF THE BOARD
15)	
Physician's and Surgeon's)	
16 No. C-17182)	
17)	
Respondent.)	

18
 19 In the interest of a prompt resolution of this matter,
 20 consistent with the public interest and the responsibilities of
 21 the Division of Medical Quality (Division), Medical Board of
 22 California (Board), the parties submit this Stipulation to the
 23 Division of Medical Quality of the Board for its approval and
 24 adoption as the final disposition of the Accusation.

25 The parties stipulate the following is true:

26 1. An Accusation, No. D-4954 is currently pending
 27 against Theodore Konig, M.D., before the Division of Medical

1 Quality of the Board. The Accusation is attached as Exhibit A
2 and incorporated herein by reference.

3 2. Respondent is presently represented by Gary
4 Wittenberg, Esq., ^{of the Law Firm, Agabekian, McFall & Tomlinson.} in Universal City, California.

5 3. Respondent is fully aware of the charges and
6 allegations contained in Accusation No. D-4954 on file with the
7 Board, and has been fully advised with regards to his rights in
8 this matter by his counsel. Respondent is aware of the right to
9 a hearing on the charges and allegations contained in the
10 accusation, right to reconsideration, appeal, and all other
11 rights which are accorded by the Administrative Procedure Act.

12 4. Respondent is entering into this Stipulation in
13 order to avoid the inconvenience, uncertainty and expense of a
14 contested administrative proceeding.

15 5. Respondent admits that the charges in the
16 Accusation constitute grounds to impose discipline upon his
17 license.

18 6. Respondent stipulates and agrees to the revocation
19 of his medical license. The parties agree that the revocation
20 will be stayed until June 1, 1993, and that during the stayed
21 period, respondent will be on probation and subject to certain
22 conditions, as set forth below.

23 7. Respondent understands and agrees that in the event
24 he ever seeks reinstatement, restoration of his license, or if he
25 seeks to reapply for a new license following the imposition of
26 revocation on June 1, 1993, the facts alleged in paragraph 4 of
27 the Accusation, and all sub-parts of paragraph 4 of the

1 Accusation, will be deemed admitted as true, and may be used in
2 any proceeding between the Board and respondent, or any other
3 licensing entity and respondent.

4 8. Respondent understands that in the event he seeks
5 reinstatement or restoration of his license, or if he reapplies
6 for a new license, his application shall be treated as a Petition
7 for Reinstatement of his license and he must comply with all the
8 applicable laws and regulations regarding such a petition.

9 9. This agreement is made exclusively for the purpose
10 of settlement of Accusation No. 4954 against Theodore Konig,
11 M.D., any future proceedings between the Board and respondent,
12 and for the use of any other licensing entity in any future
13 proceeding involving respondent. Except as specified with
14 respect to licensing proceedings, nothing contained in this
15 stipulation shall be deemed an admission in any other civil or
16 criminal action, forum or proceeding.

17 WHEREFORE, IT IS STIPULATED the Board may, without
18 further notice of formal proceeding, issue and enter the
19 following decision:

20 A. Physician's and Surgeon's Certificate No. C-
21 17182 issued to respondent Theodore Konig, M.D., is revoked,
22 provided, however, that the revocation is stayed until June 1,
23 1993, and respondent is placed on probation until June 1, 1993,
24 upon the following terms and conditions:

25 CONDITIONS

26 1. Respondent's practice will be restricted and
27 limited to working at the Kaiser Permanente Hospice

1 Program at Fontana, California, providing care and
2 comfort to terminally ill patients.

3 2. Respondent will work under the direct
4 supervision of and monitoring by another Kaiser
5 physician assigned on a full time basis to Kaiser's
6 Hospice Program at Fontana, which physician shall be
7 approved by the Division and shall prepare and submit
8 to the Division monthly evaluations on the performance
9 of respondent.

10 If the monitor resigns or is no longer available,
11 respondent shall, within seven (7) days, move to have a
12 new monitor appointed, through nomination by respondent
13 and approval by the Division.

14 3. Respondent shall obey all federal, state, and
15 local laws, and all rules governing the practice of
16 medicine in California.

17 4. Respondent shall, upon request by the
18 Division, submit declarations prepared under penalty of
19 perjury on forms provided by the Division, stating
20 whether there has been compliance with all the
21 conditions of probation.

22 5. Respondent shall comply with the Division's
23 probation surveillance program.

24 6. In the event respondent leaves California to
25 reside outside the State, respondent must notify the
26 Division, in writing, of the dates of departure and
27 return. Periods of residence outside California will

1 not alter the probationary period or the June 1, 1993
2 date in which the stay will be lifted and the
3 revocation of respondent's license will go into effect.

4 7. If respondent violates probation in any
5 respect, the Division, after giving respondent notice
6 and the opportunity to be heard, may set aside the stay
7 order and impose the revocation of respondent's
8 license.

9 ACKNOWLEDGEMENT

10 I have read the above document and I fully understand,
11 accept, and consent to all of the provisions of the above
12 stipulation and order.

13
14 Dated: Jan 9, 1993

Theodore Konig
THEODORE KONIG, M.D.
Respondent

15
16
17 I CONCUR IN THIS STIPULATION.

18
19 Dated: Jan 22, 1993

Agayanian, McFall & Tomlinson
Gary Wittenberg
GARY WITTENBERG, Esq.
Attorney for Respondent

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21
22
23
24
25 Dated: January 26, 1993

DANIEL E. LUNGREN
Attorney General of the
State of California

Beth Faber Jacobs
BETH FABER JACOBS
Deputy Attorney General

Attorneys for Complainant

ORDER

The attached Stipulation and Decision of the Board is hereby adopted by the Division of Medical Quality, Medical Board of the State of California as its decision in the above-entitled matter.

THIS DECISION SHALL BECOME EFFECTIVE on the 1st day of June, 1993.

IT IS SO ORDERED THIS 29th DAY OF April, 1993.

Theresa L. Claassen
Division of Medical Quality
Medical Board of California
State of California

December 24, 1992

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9 DEPARTMENT OF CONSUMER AFFAIRS
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11 In the Matter of the Accusation)	NO. D-4954
Against:)	
12)	
THEODORE KONIG, M.D.)	<u>ACCUSATION</u>
13 9985 Sierra)	
Fontana, CA 92335)	
14)	
Physician's and Surgeon's)	
15 Certificate No. C-17182,)	
16)	
Respondent.)	
17)	

18 Complainant, Kenneth Wagstaff, having cause for
19 disciplinary action, alleges:

20 1. He is the Executive Director of the California State
21 Medical Board of California ("Board"). He makes and files this
22 accusation solely in his official capacity.

23 2. License Status. On or about August 17, 1955,
24 Theodore Konig ("respondent") was issued Physician's and
25 Surgeon's Certificate No. C-17182, authorizing him to practice
26 medicine in the State of California. His certificate is paid and
27 current, with an expiration date of January 31, 1993, and has, at

1 all relevant times, been in full force and effect. Respondent
2 does not supervise Physician Assistants.

3 2. Jurisdiction. Section 2220 of California's
4 Business and Professions Code ("the Code") provides in pertinent
5 part that the Division of Medical Quality may take action against
6 any person guilty of violating any of the provisions of the
7 Medical Practice Act (Chapter 5 of Division 2 of the Code, also
8 known as "the Act.")

9 Section 2227 of the Code provides that a licensee whose
10 matter has been heard by the Division of Medical Quality, a
11 medical quality review committee, a panel of such committee, an
12 administrative law judge, or whose default has been entered, and
13 who is found guilty may: (a) have his certificate revoked upon
14 order of the division; (b) may have his right to practice
15 suspended for a period not to exceed one year upon order of the
16 division or a committee or panel thereof; (c) may be placed on
17 probation upon order of the division or a committee or panel
18 thereof; (d) may be publicly reprimanded by the division or a
19 committee or panel thereof; and/or (e) may have such other action
20 taken in relation to discipline as the division, a committee or
21 panel thereof, or an administrative law judge may deem proper.

22 SUMMARY OF STATUTORY VIOLATIONS

23 3. Respondent is subject to disciplinary action
24 pursuant to the following sections of the Act:^{1/}

25 a. Section 2234 provides that the Division of Medical
26

27 1. All code references are to the Business and
Professions Code, unless otherwise stated.

1 Quality shall take disciplinary action against a physician for
2 unprofessional conduct, which includes, but is not limited to the
3 following:

- 4 1. Violating or attempting to violate, directly
5 or indirectly, any provision of the Act;
- 6 2. Gross negligence;
- 7 3. Repeated negligent acts;
- 8 4. Incompetence; and
- 9 5. The commission of any act involving dishonesty
10 which is substantially related to the qualifications,
11 functions, or duties of a physician and surgeon; and

12 b. Section 2262 -- altering or modifying the medical
13 record of any person, with fraudulent intent, or creating any
14 false medical record. The section also provides that the
15 Division of Medical Quality may impose a civil penalty of \$500
16 for violation of this section, in addition to the imposition of
17 disciplinary action.

18 FACTUAL ALLEGATIONS

19 4. Respondent, Theodore Konig, M.D., has subjected his
20 license to disciplinary action by altering the medical records of
21 a patient and subsequently lying about the alterations while
22 under oath. The circumstances giving rise to these allegations
23 are as follows:

24 a. Respondent is a physician with the Southern
25 California Kaiser Permanente Foundation Medical Group ("Kaiser.")
26 In connection with his employment at Kaiser, he examined and
27 treated patient Charlotte D. R. on numerous occasions prior to

1 her death on March 12, 1988. When he was her attending
2 physician, on December 1, 1987, and on December 15, 1987, she
3 complained of symptoms which respondent interpreted as angina.
4 Respondent made certain entries on her medical record (progress
5 charts) on each of these dates. Following Ms. D. R. death on
6 March 12, 1988, respondent added entries to her medical record
7 for the dates of December 1, 1987, and December 15, 1987, as
8 follows:

9 1. On an occasion after March 12, 1988,
10 respondent added, in the body of what he had written in his
11 patient's medical record on or about December 1, 1987, the
12 statement: "does not want bypass or hospital." Respondent did
13 not date the late entry, but falsely and intentionally left the
14 implication that it was written at the same time as the remaining
15 entries on the page, which were written on or about December 1,
16 1987.

17 2. On an occasion after March 12, 1988,
18 respondent added entries to Ms. D. R. medical record
19 previously completed on or about December 15, 1987. He added the
20 statements: "probably needs angiogram" [at approximately line 8
21 of the record] and "again, as on Dec. 1, 1987 -- does not want
22 bypass operation. Does not want to be hospitalized for bypass
23 evaluation for angiogram." Respondent did not date the late
24 entries, but falsely left the implication that they were written
25 at the same time as he wrote the other entries on the page, which
26 were written on or about December 15, 1987.

27 b. Respondent was deposed by Ms. D. R. family in

1 connection with a lawsuit her family filed against respondent
2 challenging the care given by respondent to Ms. D. R. prior to
3 her death. Respondent was dishonest during his deposition on
4 November 20, 1990 when he was questioned about the entries he
5 placed on Ms. D. R.'s medical records for December 1, 1987 and
6 December 15, 1987 in the following manner:

7 1. Respondent dishonestly implied he completed
8 the entirety of the notes in his patient's progress notes date
9 stamped December 1, 1987, on December 1, 1987; and

10 2. When specifically asked whether he wrote the
11 entry which began "again as on December 1, 1987" on December 15,
12 1987, respondent dishonestly answered: "Yes."

13 3. Respondent falsely explained that the
14 rationale for his twice signing the December 15, 1987 entry was
15 that he had a second conversation with his patient later that
16 day, and that the second entry reflected that conversation. The
17 explanation was false, insofar as the entry was actually made
18 months later, and not on December 15, 1987.

19 c. Respondent made the alterations and lied about them
20 during his deposition in an attempt to avoid or limit his personal
21 liability concerning his care and treatment of Ms. D. R.

22 **BASES FOR DISCIPLINE**

23 Unprofessional Conduct of Gross Negligence,
24 Repeated Negligent Acts, and Incompetence

25 5. Section 2234 of the Medical Practice Act provides
26 that the Division of Medical Quality shall take disciplinary
27 action against any licensee who is guilty of unprofessional

1 conduct. Within section 2234, unprofessional conduct includes
2 gross negligence (section 2234 (b)), repeated negligent acts
3 (section 2234 (c)) and incompetence (section 2234 (d)).
4 Respondent has subjected his license to discipline by committing
5 gross negligence, repeated negligent acts, and displaying
6 incompetence in the following manner, as alleged in paragraphs
7 4 (a), (b) and (c), above:

8 a. Respondent altered medical records for Ms. DORR
9 dated December 1, 1987, and December 15, 1987, without indicating
10 on the records the fact that late entry additions were made;

11 b. Respondent failed to date the numerous late entries
12 he made on medical records pertaining to Ms. DORR

13 c. Respondent knowingly left a false implication that
14 all notes he wrote on Ms. DORR's medical records for December
15 1, 1987 and December 15, 1987 were in fact written on those
16 dates, despite his writing them following her death on March 12,
17 1988.

18 Acts Involving Dishonesty

19 6. Subdivision (e) of section 2234 also defines
20 unprofessional conduct which subjects a physician to discipline,
21 as "the commission of any act involving . . . dishonesty which is
22 substantially related to the qualifications, functions, or duties
23 of a physician and surgeon."

24 7. Respondent is also subject to disciplinary action
25 pursuant to section 2234 (e) for unprofessional conduct because
26 he dishonestly made the alterations and lied about them under
27 oath, and further, because he did so in an attempt to avoid or

1 limit his personal liability concerning his care and treatment of
2 Ms. D. R., as alleged above in paragraphs 4 (a), (b), and (c.)

3 Alteration of Medical Records

4 8. Section 2262 of the Medical Practice Act provides
5 that altering or modifying the medical records of any person,
6 with fraudulent intent, constitutes unprofessional conduct.

7 9. Respondent is further subject to disciplinary
8 action for unprofessional conduct pursuant to sections 2234 and
9 2262 because he altered the medical records of Ms. D. R., with
10 a fraudulent intent, by adding to her records after her death,
11 implying the additional language was written at the same time as
12 the preexisting record, and adding language intended to relieve
13 him of potential liability, as alleged in paragraphs 4 (b) and
14 (c), above.

15 WHEREFORE, complainant requests that the Board
16 hold a hearing on the matters alleged herein, and that following
17 the hearing, that the Board issue a decision:

18 1. Revoking or suspending Physician's and Surgeon's
19 Certificate No. C-92335, issued to respondent Theodore Konig;

20 2. Imposing a civil penalty of \$500.00, pursuant to
21 Business and Professions Code section 2262; and

22 ///

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27 ///

3 Taking such other and further action as the Board
deems appropriate to protect the public health, safety and
welfare.

DATED: September 17, 1992

Kenneth Wagstaff
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant